

ALAMEDA COUNTY

JAN 23 2012

By

Excc. Off/Clark  
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13 REUTERS AMERICA LLC,

14 Petitioner,

15 v.

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17 THE REGENTS OF THE UNIVERSITY OF  
18 CALIFORNIA,

19 Respondents.

20 COUNTY OF ALAMEDA

21 No. 1012613664

22 PETITION FOR WRIT OF MANDATE  
23 UNDER THE CALIFORNIA PUBLIC  
24 RECORDS ACT (Govt. Code section 6259)

25 **I. INTRODUCTION**

26 This Petition for Writ of Mandate under the California Public Records Act (“PRA”) is  
27 brought to shed light on the performance of the University of California’s (“UC’s”) investments  
28 in venture capital funds run by Sequoia Capital (“Sequoia”) and Kleiner Perkins Caufield &  
Byers (“KPCB”). In contrast to other venture capital funds, UC does not disclose on a “vintage  
year” or year-by-year basis its investments in Sequoia and KPCB funds. UC’s failure to disclose  
this information is contrary to the PRA and to a statute, Government Code section 6254.26,  
which UC sponsored. This Petition should be granted so that the public can see for itself whether  
UC’s investments in recent Sequoia and KPCB funds have performed well or poorly, in  
furtherance of the overarching principle that there is a “strong public interest in knowing how the  
government spends its money.” *International Federation of Professional and Technical*

1 *Engineers Local 21 v. Superior Court ("IFPTE") (2007) 42 Cal. 4<sup>th</sup> 319, 333.*

2 **II. FACTUAL AND PROCEDURAL BACKGROUND**

3 On September 20, 2011, Mark Boslet, the senior editor of Venture Capital Journal/peHub,  
4 owned by Petitioner Reuters America LLC (hereafter "Reuters"), wrote to Marie Berggren, the  
5 chief investment officer and acting treasurer of the respondent UC Regents,<sup>1</sup> seeking access to  
6 records showing how much UC had committed to certain venture capital funds,, namely the "UC  
7 commitment," "cash in," "current NAV," and "cash out" updated as of December 31, 2010. The  
8 funds in question were Kleiner Perkins Caufield & Byers ("KPCB") VI, VII, VIII, IX-A and XA;  
9 Sequoia Capital VII, VIII, Franchise Fund, IX and X; and Accel Partners VIII. Mr. Boslet's  
10 request also sought the investment value employed by the Treasurer's Office known as an  
11 aggregate, time-weighted return for each of the above-mentioned funds, updated to December 31,  
12 2010 or more current. A copy of his request, and ensuing correspondence from and to UC, is  
13 attached hereto as Exhibit A.

14 UC responded on September 20 by stating, "The Treasurer's Office does receive  
15 information from KPCB on an individualized fund basis. As a result, the Treasurer's Office can  
16 provide the commitment and cash flows (cash in and cash out) on an aggregate basis for Kleiner  
17 Perkins Caufield & Byers." The response also stated, "The Treasurer's Office does not calculate  
18 a time weighted rate of return for individual funds and only calculates that return on a portfolio  
19 basis." (See Exhibit A at 4-5.) UC gave a similar answer for the Sequoia Capital funds. (*Ibid.*)

20 Mr. Boslet wrote back to UC on September 22, stating, "For these fund groups, your  
21 response stated quite clearly that the Treasurer's Office receives this information on an  
22 individualized fund basis. We have seen these numbers on an individualized fund basis for prior  
23 years. We require the information on an individualized fund basis, and not on an aggregate basis.  
24 We ask that you provide this information on an individualized fund basis as required by law." He  
25 also stated, "For these fund groups, we understand that the Treasurer's Office receives the current  
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28 <sup>1</sup> The Regents are the governing body of the University of California and are based in  
Oakland, Alameda County.

1 NAV for these funds. We ask that you provide the current NAV for the above funds as required  
2 by law." (Exhibit A at 7-8.)

3 UC responded to this September 22 communication from Ms. Boslet by claiming that its  
4 first response on September 20 "contained two inadvertent typos," and that its response should  
5 have read, "The Treasurer's Office does *not* receive information from KPCB on an individualized  
6 fund basis. As a result, the Treasurer's Office can provide the commitment and cash flows (cash  
7 in and cash out) on an aggregate basis for Kleiner Perkins Caufield & Byers." Likewise, the UC  
8 response claimed that its earlier response about Sequoia Capital was a typo and should have read,  
9 "The Treasurer's Office does not receive information from Sequoia Capital on an individualized  
10 fund basis. As a result, the Treasurer's Office can provide the commitment and cash flows (cash  
11 in and cash out) on an aggregate basis for Sequoia Capital." (Exhibit A at 9-11.)

12 Mr. Boslet wrote back to Ms. Berggren on September 28, saying, "In your e-mail, you  
13 state that the Treasurer's Office does not receive this fund information on an individualized fund  
14 basis. We find it quite surprising that the Treasurer's Office is satisfied to be in a position of  
15 evaluating the performance of the pension funds without this detailed level of information.  
16 Given the public need to analyze the performance of the various investments of the pension  
17 funds, we hereby request that the Treasurer's Office request this individualized fund information  
18 from the funds themselves and provide this information to us." (Exhibit A at 12-13.) The parties  
19 have engaged in further correspondence on the subject (see Exhibit B hereto, a Nov. 29, 2011  
20 letter from Petitioner's counsel to Respondent's General Counsel) but UC still has not released  
21 the information requested on an individualized fund basis.

22 **III. REUTERS IS ENTITLED TO THE INFORMATION IT SEEKS UNDER THE  
23 PUBLIC RECORDS ACT AND UNDER PRIOR LITIGATION AGAINST UC  
24 AND LEGISLATION RESULTING THEREFROM.**

25 **A. In Prior Litigation, UC Was Ordered to Produce Identical Information.**

26 This is not the first time people have requested access to information about UC's venture  
27 capital investments, and not the first time UC has denied the requests. In 2003, the Coalition of  
28 University Employees ("CUE") and the *San Jose Mercury News* ("Mercury News") requested the  
same information now requested by Reuters, the "internal rate of return" ("IRR") of any private

1 legislation clarifying the obligations of public pension funds to disclose information about their  
2 "alternative investments" such as investments in venture capital funds. In 2005, the Legislature  
3 passed legislation (Statutes 2005, chapter 258) which is now set forth in Government Code  
4 section 6254.26<sup>2</sup> which contains that clarification.

5       Section 6254.26(a) sets forth a list of types of information which is not subject to  
6 disclosure. But section 6254.26(b) provides that all of the types of information requested by  
7 Reuters are subject to disclosure: "Notwithstanding subdivision (a), the following information  
8 contained in records described in subdivision (a) regarding alternative investments in which  
9 public investment funds invest shall be subject to disclosure pursuant to this chapter and shall not  
10 be considered a trade secret exempt from disclosure."

11       The list of records expressly subject to disclosure under section 6254.26(b) mirrors the  
12 records requested by Reuters: the dollar amount of the commitment "made to each alternative  
13 investment vehicle by the public investment fund since inception" (section 6254.26(b)(2); see  
14 request for "UC commitment"); the "dollar amount of cash contributions made by the public  
15 investment fund to each alternative investment vehicle since inception" (section 6254.26(b)(3);  
16 see request for "cash in"); the dollar amount, on a fiscal year-end basis, of cash distributions  
17 received by the public investment fund from each alternative investment vehicle" (see section  
18 6254.26(b)(4); see request for "cash out"); and the "net internal rate of return of each alternative  
19 investment vehicle since inception" (compare section 6254.26(b)(6) to request for "aggregate,  
20 time weighted return for each of the above-mentioned [Kleiner Perkins and Sequoia] funds."<sup>3</sup>

21       UC apparently does not contend that any of the information sought is exempt from  
22 disclosure under the Public Records Act. Nor could it. Rather, UC seems to contend – after  
23 initially admitting that it "does receive information from [Kleiner Perkins and Sequoia] on an  
24 individualized fund basis" – that it "does not receive information from KPCB [and Sequoia] on an

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27       <sup>2</sup> Hereafter all statutory references are to the Government Code unless otherwise  
28 indicated.

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29       <sup>3</sup> Petitioner is also requesting the "net internal rate of return." (See Exhibit B hereto.)

1 individualized fund basis," and that it does not calculate a time weighted rate of return for  
2 individual funds. Significantly, UC made no such contention in the *Coalition of University*  
3 *Employees* case, arguing instead that records of a fund's performance were exempt. (UC was  
4 invested in Kleiner Perkins and Sequoia funds at that time.) Now, having lost its claims of  
5 exemption, UC has changed its tune from "we have it, but it's exempt" to "we don't have it," a  
6 Public Records Act version of "the dog ate my homework."

7       UC's position does not comply with the Public Records Act for several reasons. First,  
8 section 6254.26 expressly requires that records of the dollar amount committed by public pension  
9 funds "to each alternative investment vehicle," the "cash in," the cash distributions received by the  
10 public pension funds "from each alternative investment vehicle," and the "net internal rate of  
11 return of each alternative investment vehicle since inception" must be disclosed. See  
12 Government Code section 6254.26(b)(2), (3), (4) and (6). Significantly, the legislation refers to  
13 "records" which "shall be subject to disclosure and refers to the "keeper of the information." The  
14 plain language of the statute requires certain information to be disclosed and does not allow a  
15 public agency to hide behind the excuse that it doesn't keep the information. Indeed, UC admits  
16 that every other fund's information is available on a vintage year basis; only Sequoia's and KP's  
17 year-by-year information is not provided. (Exhibit A at 10.)

18       In short, nothing in section 6254.26(b) allows UC to make a special case of two funds and  
19 to disclose year-by-year internal rate of return and cash-in, cash-out information for all venture  
20 capital funds except Sequoia Capital and Kleiner Perkins. The plain language of section  
21 6254.26(b) – a statute heavily lobbied for by UC – provides that information about internal rate  
22 of return and the amount of money invested and received by public pension funds must be  
23 disclosed.

24       This conclusion also follows from the Alameda County Superior Court's decision in the  
25 *Coalition of University Employees v. UC Regents* case. In that case, UC claimed that the  
26 internal rate of return calculations were trade secrets of Cambridge Associates, which then was  
27 (and apparently now is) an independent consultant retained by UC to "collect and analyze data  
28 provided by the general partners of private equity partnerships." (*CUE v. UC*, Exhibit C hereto at

1 6.) The Court rejected the “trade secret” argument made by UC, observing, “The public interest  
2 in favor of disclosure of government financial information is clear.” (*Id.* at 9.) The Court’s  
3 decision presupposes – and section 6254.26(b) makes explicit – that if UC hires an outside entity  
4 to calculate internal rate of return, the records are subject to disclosure, and UC cannot avoid  
5 disclosure by claiming it doesn’t have the information.

6 Second, the Public Records Act in general and section 6254.26(b) in particular require  
7 UC to provide the IRR information requested on an individual fund basis, not an “aggregate”  
8 basis. Section 6254.26(b) requires disclosure of information about “alternative investment  
9 vehicles,” and each particular fund is a different “alternative investment vehicle.” The public has  
10 a strong interest in disclosure not just of the “aggregate” performance of venture capital funds like  
11 Kleiner Perkins and Sequoia, but each “alternative investment vehicle.” For example, Sequoia’s  
12 “aggregate” performance may be inflated by the investment of one of its funds in Google, but  
13 later funds may have performed poorly and have different managers. The public has a strong  
14 interest in knowing not just the aggregate performance, but the individual performance of each  
15 particular fund. And notably, every other individual fund’s performance is disclosed on UC’s  
16 website; only Kleiner Perkins and Sequoia are given special treatment. There is no principled or  
17 legal basis for treating Kleiner Perkins and Sequoia differently; both the public whose tax dollars  
18 pay for UC’s investments, and other funds whose information is subject to disclosure are  
19 disserved by the special and disparate treatment UC has granted Kleiner Perkins and Sequoia.<sup>4</sup>

20 **IV. REASONS FOR GRANTING THE PETITION**

21 Petitioners have no plain, speedy and adequate remedy at law other than the instant  
22 Petition. This Petition is specifically authorized under California Government Code sections  
23 6258 and 6259. Section 6258 states that PRA matters shall be heard “at the earliest possible  
24 time,” and petitioners therefore request a hearing in this Court on this Petition at the earliest

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26 <sup>4</sup> UC’s September 26 e-mail says that UC “stopped receiving this level of detail [for  
27 Sequoia and KP] in 2003.” (Exhibit A at 10.) Interestingly, the Alameda County Superior  
28 Court’s decision in *Coalition of University Employees v. UC* was filed on July 24, 2003, which  
suggests that Sequoia Capital and KP may have intentionally defied the Court’s order by deciding  
not to give UC the information in an attempt to hide information which the court had said was  
subject to disclosure.

1 possible time.

2 UC's refusal to provide the requested information lacks legal justification and violates the  
3 PRA. The information requested is disclosable under the PRA. Even if UC had agreed with  
4 Kleiner Perkins or Sequoia to keep certain information private, "Assurances of confidentiality by  
5 [UC] to [private companies] was not sufficient to convert what was a public record into a private  
6 record." *San Gabriel Tribune v. Superior Court* (1983) 143 Cal. App. 3d 762, 775. Moreover,  
7 the public and UC employees whose retirement security depends upon UC's investments has an  
8 interest in the performance of UC's investments which far outweighs any interest in hiding the  
9 performance of such investments. Indeed, other venture capital funds disclose the very  
10 information sought here, performance on a year-by-year basis of each of their funds.

## PRAYER

12 WHEREFORE, petitioners pray as follows:

13 1. That this Court order respondent UC to release all reports, documents and other  
14 records showing the performance of private equity investments made by UC, including but not  
15 limited to documents showing the performance of each investment on a fund year basis made by  
16 UC in Kleiner Perkins Caufield & Byers and Sequoia Capital, as requested in Exhibit A hereto,  
17 the September 20, 2011 Public Records Act request from Mark Boslet to Marie Berggren, and  
18 ensuing correspondence, and Exhibit B hereto;

19           2. Alternatively, if the records are not ordered released immediately, that this Court  
20 review *in camera* the documents requested pursuant to Government Code section 6259, and/or  
21 show cause why the records requested should not be disclosed;

22 3. That this Court order UC to pay Petitioner's reasonable attorney's fees and other  
23 court costs pursuant to, *inter alia*, Government Code section 6259; and

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1                   4. For such other and further relief as the court may deem just and proper.  
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Dated: January 23, 2012

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9  
10                   RAM, OLSON, CEREGHINO &  
11                   KOPCZYNSKI LLP

12                   By: 

13                   Karl Olson

14                   Attorneys for Petitioners

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## VERIFICATION

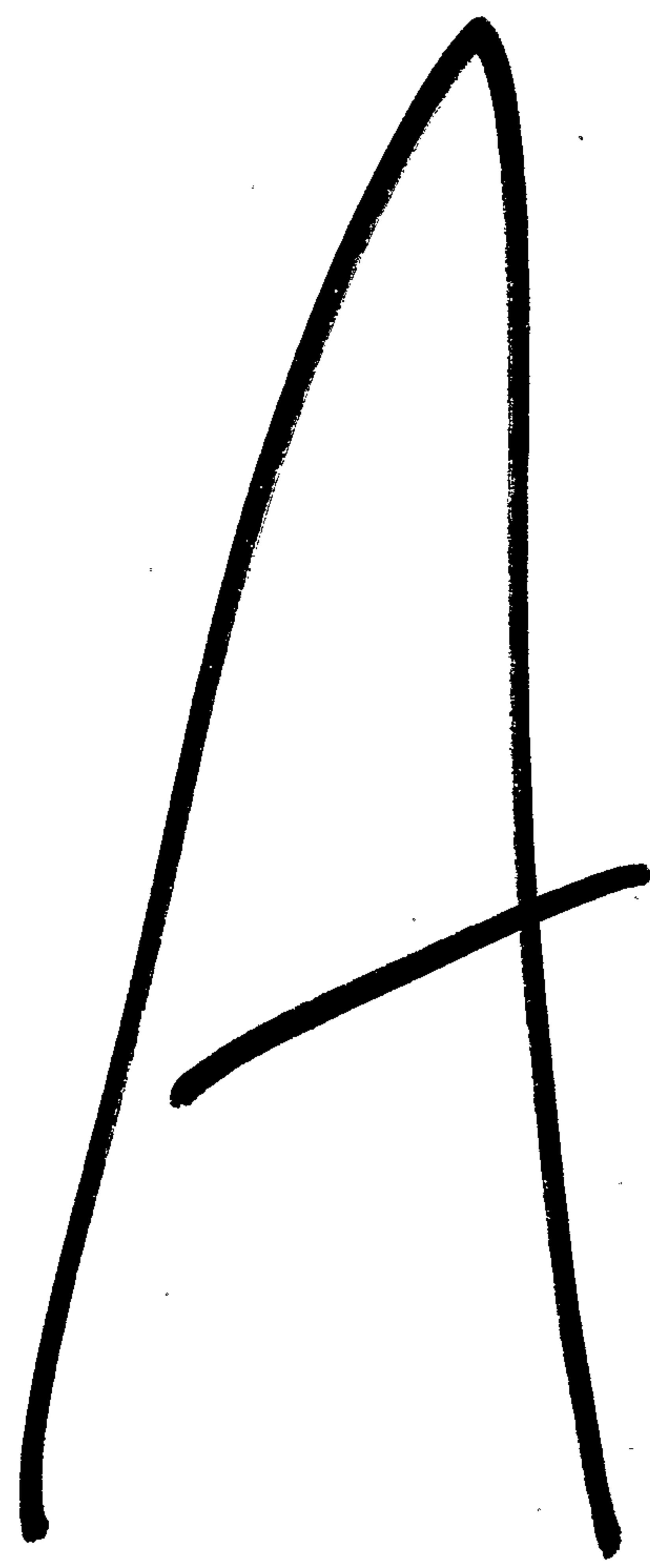
2 I, Mark Boslet, am a senior editor employed by petitioner Reuters America LLC. I have  
3 read the foregoing Petition for Writ of Mandate under the California Public Records Act. The  
4 same is true of my own knowledge, except as to matters stated therein on information and belief  
5 and as to them I believe them to be true.

6 I declare under penalty of perjury that the foregoing is true and correct.

7      Executed in Redwood City, California on January 6, 2012.

  
Mark Boslet

Mark Boslet



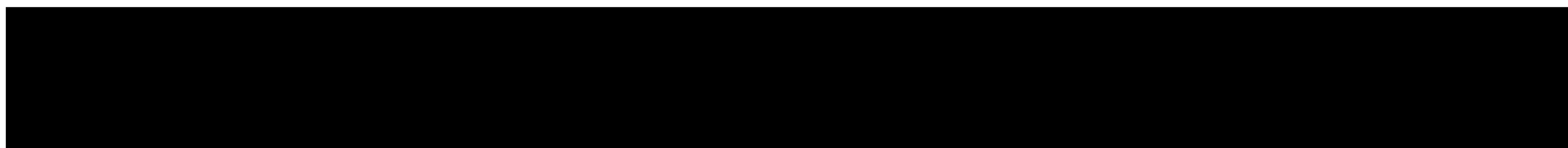
11/16/2001

To: Jonathan Weber, West Coast Bureau Chief, Thomson Reuters

From: Mark Boslet, senior editor, peHUB,  
Lawrence Aragon, editor in chief, peHUB

RE: California Public Records Act Correspondence with the University of California  
Board of Regents

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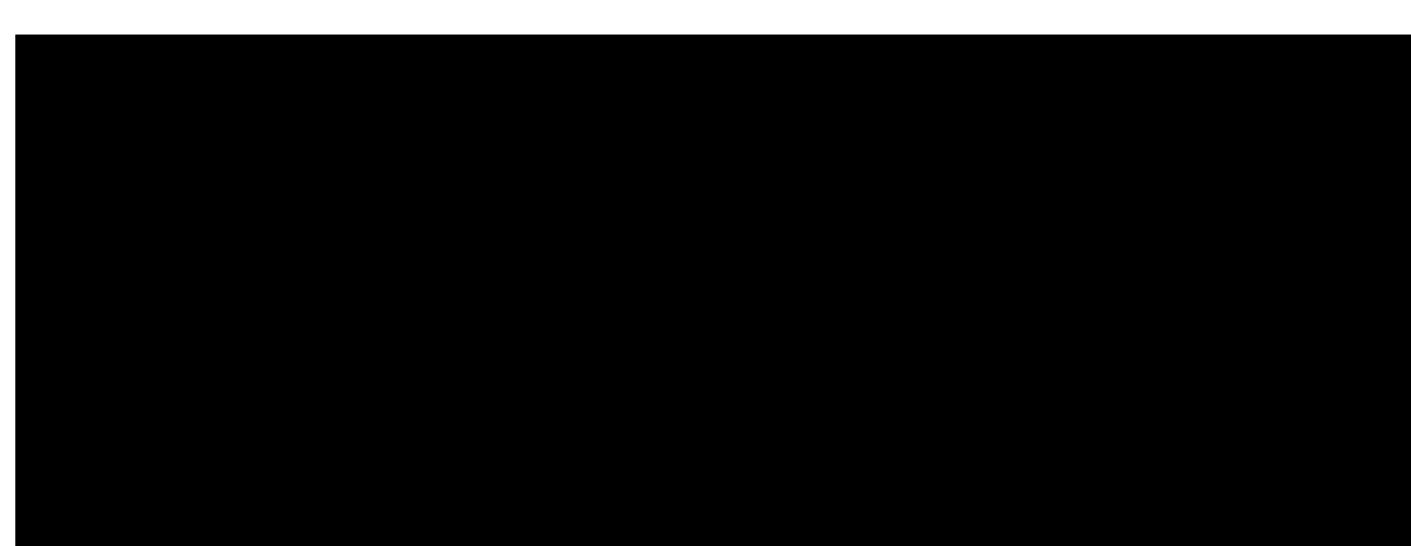
Sept. 20, 2011

Marie Berggren, Chief Investment Officer and Acting Treasurer

Treasurer of the Regents

1111 Broadway, 14<sup>th</sup> Floor

Oakland, CA 94607-9898

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RE: Public Records Act Request

Dear Ms. Berggren,

Pursuant to our rights under the California Public Records Act (Government Code Section 6250 et seq.) we ask to obtain the following information, which we understand to

be held by your agency:

The investment values commonly referred to as “UC commitment,” “cash in,” “current NAV” and “cash out” updated as of Dec. 31, 2010 for all Kleiner Perkins Caufield & Byers funds in the Regents of the University of California alternative investments portfolio (including, but not limited to Kleiner Perkins Caufield & Byers VI, VII, VIII, IX-A and X-A).

The investment value employed by the Treasurer’s Office known as an aggregate, time weighted return for each of the above-mentioned Kleiner Perkins Caufield & Byers funds updated to Dec. 31, 2010 or more current.

The investment values commonly referred to as “UC commitment,” “cash in,” “current NAV” and “cash out” updated as of Dec. 31, 2010 for all Sequoia Capital funds in the Regents of the University of California alternative investments portfolio (including, but not limited to Sequoia Capital VII, VIII, Franchise Fund, IX and X).

The investment value employed by the Treasurer’s Office known as an aggregate, time weighted return for each of the above-mentioned Sequoia Capital funds updated to Dec. 31, 2010 or more current.

The investment values commonly referred to as “UC commitment,” “cash in,” “current NAV” and “cash out” updated as of Dec. 31, 2010 for all Accel Partners funds in the Regents of the University of California alternative investments portfolio (including, but not limited to Accel VIII).

The investment value employed by the Treasurer’s Office known as an aggregate, time weighted return for each of the above-mentioned Accel Partners funds updated to Dec. 31, 2010 or more current.

Given the urgent public interest in understanding the investment portfolio of the Regents

of the University of California, we hereby request that you provide an expedited review of this request and contact us directly by telephone or e-mail if you have any questions or need additional information.

Thank you for your time and attention to this matter.

Best,

Mark Boslet

Senior Editor

Venture Capital Journal/peHUB

Thomson Reuters Publications

305 Louis Lane

Redwood City, CA 94063

[REDACTED]

[REDACTED]

Lawrence Aragon

Editor

Venture Capital Journal/peHUB

Thomson Reuters Publications

425 Market Street

San Francisco, CA 94105

[REDACTED]

###

UCOP-PRA [REDACTED] Tue, Sep 20, 2011 at 12:50 PM

To: Mark Boslet [REDACTED]

Cc: [REDACTED]

Dear Mr. Boslet,

This is to provide you with a programming costs estimate. Your request will require data compilation, extraction, and/or programming from University databases. The California Public Records Act provides that requestors bear the cost of producing a copy of the record, including the cost to construct a record, when the request would require data compilation, extraction, or programming to produce the record. (Government Code Section 6253.9(b)).

The available data that is responsive to your requests is as follows:

1. *The investment values commonly referred to as "UC commitment," "cash in," "current NAV" and "cash out" updated as of Dec. 31, 2010 for all Kleiner Perkins Caufield & Byers funds in the Regents of the University of California alternative investments portfolio (including, but not limited to Kleiner Perkins Caufield & Byers VI, VII, VIII, IX-A and X-A).*

The Treasurer's Office does receive information from KPCB on an individualized fund basis. As a result, the Treasurer's Office can provide the commitment and cash flows (cash in and cash out) on an aggregate basis for Kleiner Perkins Caufield & Byers.

2. *The investment value employed by the Treasurer's Office known as an aggregate, time weighted return*

for each of the above-mentioned Kleiner Perkins Caufield & Byers funds updated to Dec. 31, 2010 or more current.

The Treasurer's Office does not calculate a time weighted rate of return for individual funds and only calculates that return on a portfolio basis.

3. *The investment values commonly referred to as "UIC commitment," "cash in," "current NAV" and "cash out" updated as of Dec. 31, 2010 for all Sequoia Capital funds in the Regents of the University of California alternative investments portfolio (including, but not limited to Sequoia Capital VII, VIII, Franchise Fund, IX and X).*

The Treasurer's Office does receive information from Sequoia Capital on an individualized fund basis. As a result, the Treasurer's Office can provide the commitment and cash flows (cash in and cash out) on an aggregate basis for Sequoia Capital.

4. *The investment value employed by the Treasurer's Office known as an aggregate, time weighted return for each of the above-mentioned Sequoia Capital funds updated to Dec. 31, 2010 or more current.*

The Treasurer's Office does not calculate a time weighted rate of return for individual funds and only calculates that return on a portfolio basis.

5. *The investment values commonly referred to as "UIC commitment," "cash in," "current NAV" and "cash out" updated as of Dec. 31, 2010 for all Accel Partners funds in the Regents of the University of California alternative investments portfolio (including, but not limited to Accel VIII).*

The Treasurer's Office can provide the commitment and cash flows (cash in and cash out) for Accel Partners.

6. *The investment value employed by the Treasurer's Office known as an aggregate, time weighted return*

*for each of the above-mentioned Accel Partners funds updated to Dec. 31, 2010 or more current.*

**The Treasurer's Office does not calculate a time weighted rate of return for individual funds and only calculates that return on a portfolio basis.**

The estimate to produce the commitment, cash in, cash out and current NAV for the requested funds is \$684. Again, this is an estimate and the actual time expended may be more or less. The final costs will reflect the actual time expended to appropriately respond to your request.

The University requires that requestors send a deposit (**checks only**) for half (1/2) of the estimated costs, payable to "UC Regents," before any programming will commence. \$342 is half of \$684. Please mail via U.S. Postal Service your deposit check in the amount of **\$342** to the address below.

You will be notified once the programming is completed and the balance for the programming costs will be due. We estimate that the responsive records will be ready for release in 3-4 weeks. Once we receive your check for the balance due, we will forward you the responsive records.

Please remember to forward all records requests and subsequent inquiries directly to the Public Records Office at [pra@ucop.edu](mailto:pra@ucop.edu). Inquiries about this PRA request should refer to PRA number **11-519**.

Regards,

**Public Records Office**

**UC Office of the President**

Office of the General Counsel

1111 Franklin Street, 8th Floor

Oakland, CA 94607

[pra@ucop.edu](mailto:pra@ucop.edu)

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Sept. 22, 2011

Marie Berggren, Chief Investment Officer and Acting Treasurer

Treasurer of the Regents

1111 Broadway, 14<sup>th</sup> Floor

Oakland, CA 94607-9898

RE: Reuters PRA Request, PRA Number 11-519

We are writing in response to your email dated September 20, 2011. We have two questions with respect to your responses concerning the Kleiner Perkins Caufield & Byers funds and Sequoia Capital Funds.

1. For these fund groups, your response stated quite clearly that the Treasurer's Office

receives this information on an individualized fund basis. We have seen these numbers on an individualized fund basis for prior years. We require the information on an individualized fund basis, and not on an aggregate basis. We ask that you provide this information on an individualized fund basis as required by law.

2. For these fund groups, we understand that the Treasurer's Office receives the current NAV for these funds. We ask that you provide the current NAV for the above funds on an individualized basis as required by law.

One final point in general with regard to your response. You have estimated a cost of \$684. We do not understand how you have arrived at this number and we ask that you please provide a further explanation. It is our understanding that we are responsible only for copying costs. Given the information we are requesting, we do not understand how the copying costs could be that high.

Best,

Mark Boslet

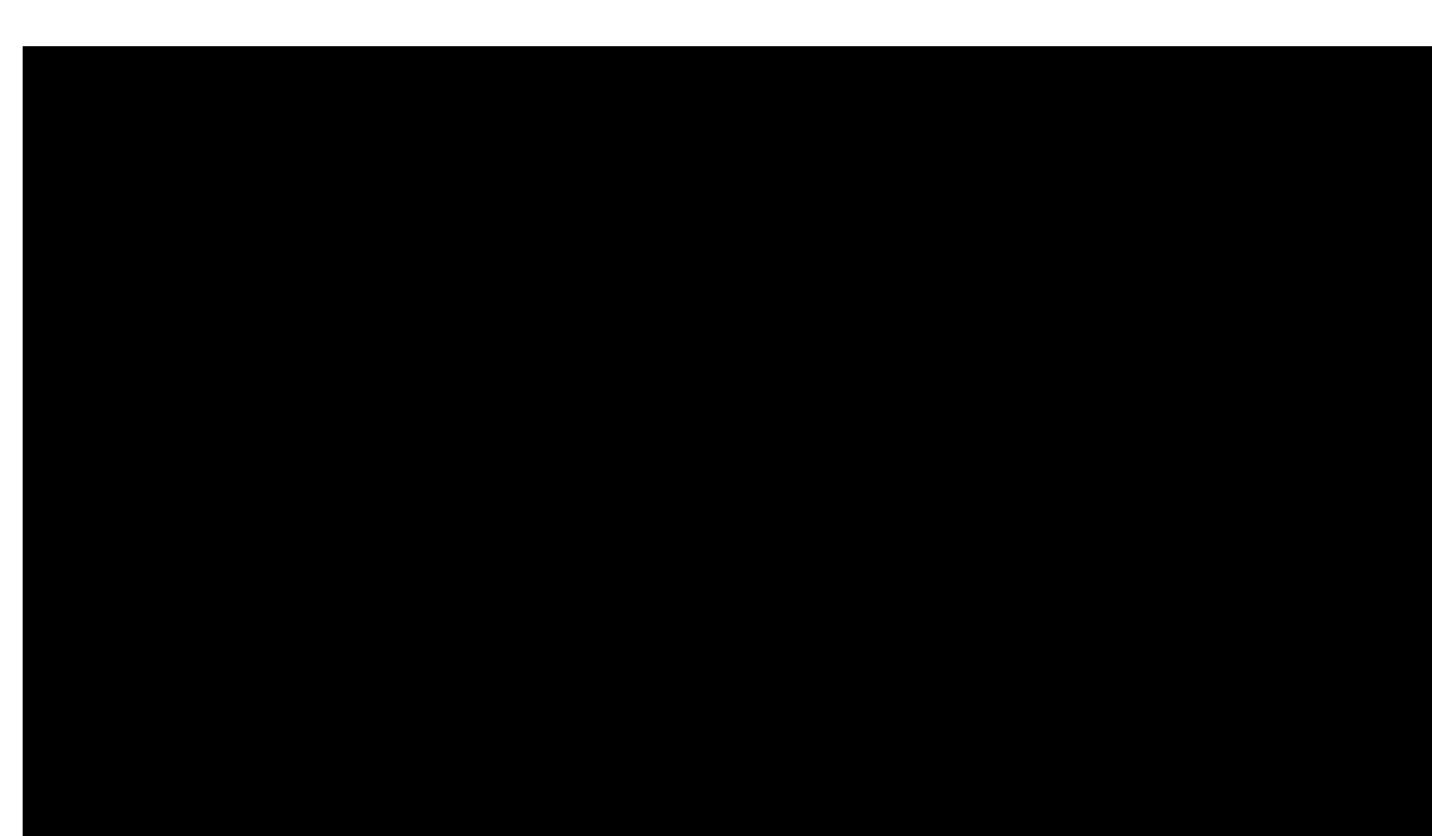
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Lawrence Aragon

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Venture Capital Journal/peHUB

Thomson Reuters Publications

425 Market Street

San Francisco, CA 94105

[REDACTED]

####

UCOP-PRA [REDACTED] Mon, Sep 26, 2011 at 4:37 PM

To: Mark Boslet [REDACTED], UCOP-PRA [REDACTED]

Cc: [REDACTED] >" [REDACTED]

Dear Mr. Boslet, Mr. Aragon:

We offer our sincerest apologies for the confusion. Our prior response contained two inadvertent typos in sections 1 and 3. The information should have read as follows:

1. *The investment values commonly referred to as "UC commitment," "cash in," "current NAV" and "cash out" updated as of Dec. 31, 2010 for all Kleiner Perkins Caufield & Byers funds in the Regents of the University of California alternative investments portfolio (including, but not limited to Kleiner Perkins Caufield & Byers VI, VII, VIII, IX-A and X-A).*

The Treasurer's Office does not receive information from KPCB on an individualized fund basis. As a result, the Treasurer's Office can provide the commitment and cash flows (cash in and cash out) on an aggregate basis for Kleiner Perkins Caufield & Byers.

and

3. *The investment values commonly referred to as "UC commitment," "cash in," "current NAV" and "cash out" updated as of Dec. 31, 2010 for all Sequoia Capital funds in the Regents of the University of California alternative investments portfolio (including, but not limited to Sequoia Capital VII, VIII, Franchise Fund, IX and X).*

The Treasurer's Office does not receive information from Sequoia Capital on an individualized fund basis. As a result, the Treasurer's Office can provide the commitment and cash flows (cash in and cash out) on an aggregate basis for Sequoia Capital.

The Treasurer's Office does not receive information for Sequoia and KP on an individual fund basis, and stopped receiving this level of detail in 2003. In fact, there is a footnote on the Treasurer's Office website that speaks to this particular issue. Here is the link to that page for your convenience:

[http://www.ucop.edu/treasurer/invinfo/pe\\_irr\\_1210.pdf](http://www.ucop.edu/treasurer/invinfo/pe_irr_1210.pdf).

As to your final point, the California Public Records Act provides that requestors bear the cost of producing a copy of a record, including the cost to construct the record, when the request would require data compilation, extraction, or programming to produce the record. (Government Code section 6253.9(b)). When an actual, responsive record does not exist, which is the case here, the aforementioned provision is applicable. The provisions under Government Code section 6253.9(b), which the University typically refers to as "programming costs," are separate and distinct from those provided under Government Code section 6253(b). Government Code section 6253(b) provides that agencies may make records available "upon payment of fees covering direct costs of duplication." The University typically refers to these direct costs of duplication as "copy costs."

As we previously informed you, your request will require data compilation, extraction, and/or programming from University databases because an actual, responsive record does not exist. Therefore, we have provided a programming costs estimate, rather than a copy costs estimate. Per your request, we have reviewed the programming costs estimate more closely and determined a more accurate estimate.

The new estimate to produce the commitment, cash in, cash out and current NAV information for the requested firms is \$57.00. Please note, the information will not include a time weighted rate of return calculation for individual funds or on a portfolio basis.

Again, we apologize for the inadvertent typos in our previous message. We hope that this message is informative and helpful. If you wish to proceed with your request, the University requires that you send a deposit (**checks only**) for half (1/2) of the estimated costs, payable to "UC Regents," before any programming will commence. \$28.50 is half of \$57.00. Please mail via U.S. Postal Service your deposit check in the amount of \$28.50 to the address below.

Please bear in mind: this is an estimate and the actual time expended may be more or less. The final costs will reflect the actual time expended to appropriately respond to your request.

You will be notified once the programming is completed and the balance for the programming costs will be due. We estimate that the responsive records will be ready for release in 3-4 weeks. Once we receive your check for the balance due, we will forward you the responsive records.

Please remember to forward all records requests and subsequent inquiries directly to the Public Records Office at [pra@ucop.edu](mailto:pra@ucop.edu). Inquiries about this PRA request should refer to PRA number 11-519.

Regards,

**Public Records Office**

**UC Office of the President**

**Office of the General Counsel**

1111 Franklin Street, 8th Floor

Oakland, CA 94607

pra@ucop.edu

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###

To: [REDACTED]

Cc: [REDACTED]

Sept. 28, 2011

Marie Berggren, Chief Investment Officer and Acting Treasurer

Treasurer of the Regents

1111 Broadway, 14<sup>th</sup> Floor

Oakland, CA 94607-9898

pra@ucop.edu

RE: Reuters PRA Request, PRA Number 11-519

Dear Ms. Berggren:

We are writing in response to your email dated September 26, 2011. We have two questions with respect to your response concerning the Kleiner Perkins Caufield & Byers funds and the Sequoia Capital Funds.

In your email, you state that the Treasurer's Office does not receive this fund information on an individualized fund basis. We find it quite surprising that the Treasurer's Office is satisfied to be in a position of evaluating the performance of the pension funds without this detailed level of information. Given the public need to analyze the performance of the various investments of the pension funds, we hereby request that the Treasurer's Office request this individualized fund information from the funds themselves and provide this information to us.

Best,

Mark Boslet

Senior Editor

Venture Capital Journal/peHUB

Thomson Reuters Publications

305 Louis Lane

Redwood City, CA 94063

[Redacted]  
Lawrence Aragon

Editor

Venture Capital Journal/peHUB

Thomson Reuters Publications

425 Market Street

San Francisco, CA 94105

[REDACTED]

###

UCOP-PRA [REDACTED] Thu, Sep 29, 2011 at 4:05 PM

To: Mark Boslet [REDACTED] UCOP-PRA [REDACTED]

Cc: [REDACTED]

Dear Mr. Boslet:

Respectfully, your most recent request that the Treasurer's Office request individualized fund information from the funds themselves is an information request, not a request for existing public records, and therefore beyond the scope of the Public Records Act. As such, your information request is denied. Additionally, the University of California believes we have adequate information regarding the performance of the specific investments mentioned in your request.

Again, if you wish to proceed with your Public Records Act request, the University requires that you send a deposit (checks only) for half (1/2) of the estimated costs, payable to "UC Regents," before any programming will commence. \$28.50 is half of \$57.00. Please mail via U.S. Postal Service your deposit check in the amount of \$28.50 to the address below.

Please remember to forward all records requests and subsequent inquiries directly to the

Public Records Office at [pra@ucop.edu](mailto:pra@ucop.edu). Inquiries about this PRA request should refer to **PRA number 11-519**.

Regards,

**Public Records Office**  
**UC Office of the President**  
**Office of the General Counsel**  
**1111 Franklin Street, 8th Floor**  
**Oakland, CA 94607**  
[pra@ucop.edu](mailto:pra@ucop.edu)

###

UCOP-PRA [REDACTED] **Tue, Oct 11, 2011 at 12:13 PM**  
To: UCOP-PRA [REDACTED] Mark Boslet [REDACTED]  
Cc: " [REDACTED] [REDACTED] [REDACTED] [REDACTED]" [REDACTED]

Dear Mr. Boslet:

The University has completed the programming you requested and the data is ready for release. The University requires that you send the balance due, \$28.50, payable to "UC Regents" before we release the data to you. Please mail your check for the balance due to the address below via U.S. Postal Service and reference "PRA 11-519" on your check. Once we receive your check for the balance due, we will forward you the responsive data.

If you have any questions or concerns, please forward them to [pra@ucop.edu](mailto:pra@ucop.edu). Inquiries about this PRA request should refer to **PRA number 11-519**.

us. We sent a deposit with the requested fee.

We still have a need for the individualized fund information for the Kleiner Perkins Caufield & Byers funds and the Sequoia Capital funds. We understand that you have classified this as an information request rather than a public records request. While we do not concede that this request is beyond the scope of the Public Records Act, if you do not deem this to be a request for public records, and you deem it to be an information request, then we ask that you provide us with this information as an information request. If there is a different process for submitting an information request, please let us know. Thank you.

Best,

Mark Boslet

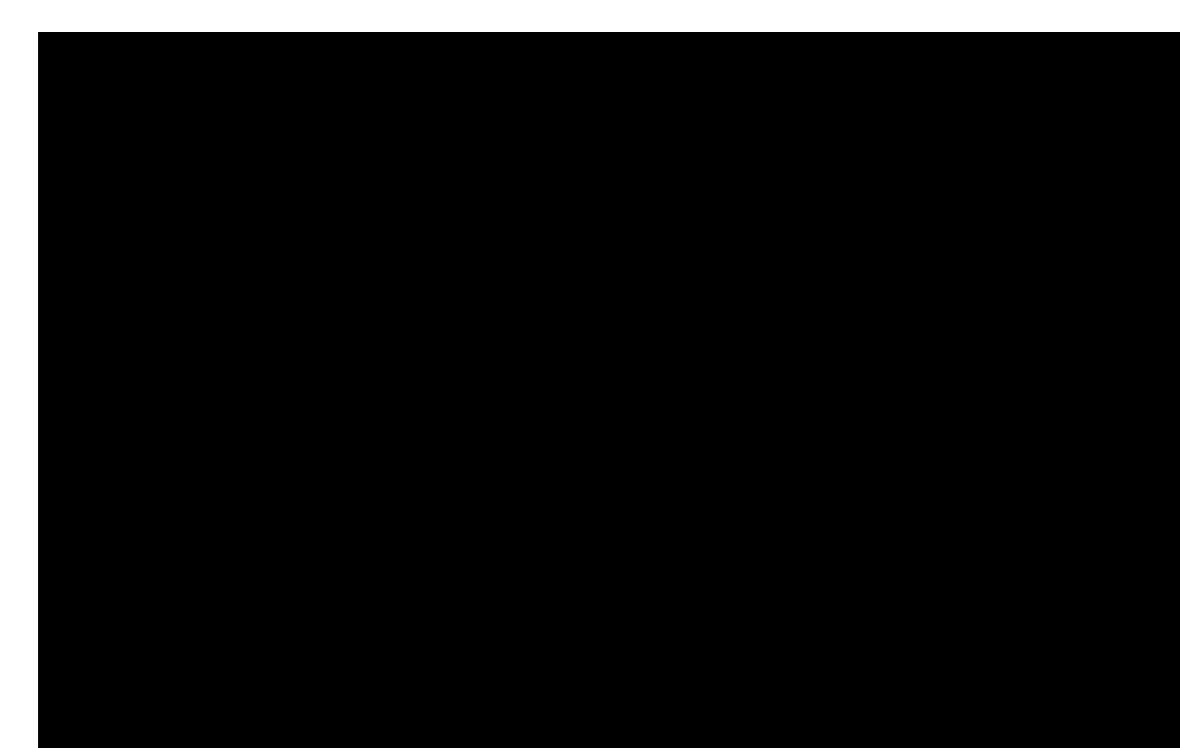
Senior Editor

Venture Capital Journal/peHUB

Thomson Reuters Publications

305 Louis Lane

Redwood City, CA 94063



Lawrence Aragon

Editor

Venture Capital Journal/peHUB

Thomson Reuters Publications

425 Market Street

San Francisco, CA 94105

[REDACTED]

###

**UCOP-PRA**

**Wed, Oct 19, 2011 at 10:02 AM**

To: Mark Boslet

Dear Mr. Boslet:

Our office does not field requests for information, and there is no alternative, formal process for submitting such requests. Again, because your most recent request is not a request for records retained by the University, it is beyond the scope of the Public Records Act.

The University has completed the programming you requested and the data is ready for release. The University requires that you send the balance due, \$28.50, payable to "UC Regents" before we release the data to you. Please mail your check for the balance due to the address below via U.S. Postal Service and reference "PRA 11-519" on your check. Once we receive your check for the balance due, we will forward you the responsive data.

Inquiries about this PRA request should refer to PRA number 11-519.

Regards,

Public Records Office

UC Office of the President

Office of the General Counsel  
1111 Franklin Street, 8th Floor  
Oakland, CA 94607

[pra@ucop.edu](mailto:pra@ucop.edu)

###

UCOP-PRA [REDACTED] Tue, Nov 1, 2011 at 2:20 PM

To: UCOP-PRA [REDACTED] Mark Boslet [REDACTED]

Cc: [REDACTED]

Dear Mr. Boslet,

This is to respond to your California Public Records Act ("PRA") request, received by our office on September 20, 2011. Thank you for your check reflecting the programming costs.

Below is the data responsive to your request. As for the commitments, this information is available on the UC Treasurer's Office website.

**As of 12-31-2010**

<u>Firm</u>	<u>Drawdowns</u>	<u>Distributions</u>	<u>NAV</u>
Sequoia	\$(133,372,266)	\$738,953,173	\$37,117,742
KPC&B	\$(128,131,631)	\$1,126,450,329	\$18,825,634
Accel	\$(11,716,500)	\$11,073,700	\$3,086,046

With this release of responsive data, your request, PRA 11-519, will now be considered closed.

Regards,

**Public Records Office**

**UC Office of the President**

**Office of the General Counsel**

**1111 Franklin Street, 8th Floor**

**Oakland, CA 94607**

[pra@ucop.edu](mailto:pra@ucop.edu)

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RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP  
ATTORNEYS

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November 29, 2011

**BY FAX (510-987-9757) AND MAIL**

Charles F. Robinson  
General Counsel  
The Regents of the University of California  
1111 Franklin Street, 8<sup>th</sup> Floor  
Oakland, CA 94607

**Re: Public Records Act**

Dear Mr. Robinson:

I am writing on behalf of my clients, Thomson Reuters and the Venture Capital Journal/peHub, regarding their California Public Records Act ("PRA") requests for certain information about venture capital funds in which the University of California invests. For reasons which follow, my clients are entitled to access to the records they seek.

**I. Factual Background**

On September 20, 2011, Mark Boslet, the senior editor of Venture Capital Journal/peHub, wrote to Marie Berggren, the chief investment officer and acting treasurer of the UC Regents, seeking access to records showing how much UC had committed to certain venture capital funds, namely the "UC commitment," "cash in," "current NAV," and "cash out" updated as of December 31, 2010. The funds in question were Kleiner Perkins Caufield & Byers ("KPCB") VI, VII, VIII, IX-A and XA; Sequoia Capital VII, VIII, Franchise Fund, IX and X; and Accel Partners VIII. Mr. Boslet's request also sought the investment value employed by the Treasurer's Office known as an aggregate, time-weighted return for each of the above-mentioned funds, updated to December 31, 2010 or more current. A copy of his request, and ensuing correspondence from and to UC, is attached hereto as Exhibit A.

UC responded on September 20 by stating, "The Treasurer's Office does receive information from KPCB on an individualized fund basis. As a result, the Treasurer's Office can provide the commitment and cash flows (cash in and cash out) on an aggregate basis for Kleiner Perkins Caufield & Byers." The response also stated, "The Treasurer's Office does not calculate a time weighted rate of return for individual funds and only calculates that return on a portfolio basis." (See Exhibit A at 4-5.) UC gave a similar answer for the Sequoia Capital funds. (*Ibid.*)

Mr. Boslet wrote back to UC on September 22, stating, "For these fund groups, your response stated quite clearly that the Treasurer's Office receives this information on

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Charles F. Robinson  
General Counsel  
The Regents of the University of California  
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an individualized fund basis. We have seen these numbers on an individualized fund basis for prior years. We require the information on an individualized fund basis, and not on an aggregate basis. We ask that you provide this information on an individualized fund basis as required by law." He also stated, "For these fund groups, we understand that the Treasurer's Office receives the current NAV for these funds. We ask that you provide the current NAV for the above funds as required by law." (Exhibit A at 7-8.)

UC responded to this September 22 communication from Ms. Boslet by claiming that its first response on September 20 "contained two inadvertent typos," and that its response should have read, "The Treasurer's Office does *not* receive information from KPCB on an individualized fund basis. As a result, the Treasurer's Office can provide the commitment and cash flows (cash in and cash out) on an aggregate basis for Kleiner Perkins Caufield & Byers." Likewise, the UC response claimed that its earlier response about Sequoia Capital was a typo and should have read, "The Treasurer's Office does not receive information from Sequoia Capital on an individualized fund basis. As a result, the Treasurer's Office can provide the commitment and cash flows (cash in and cash out) on an aggregate basis for Sequoia Capital." (Exhibit A at 9-11.)

Mr. Boslet wrote back to Ms. Berggren on September 28, saying, "In your e-mail, you state that the Treasurer's Office does not receive this fund information on an individualized fund basis. We find it quite surprising that the Treasurer's Office is satisfied to be in a position of evaluating the performance of the pension funds without this detailed level of information. Given the public need to analyze the performance of the various investments of the pension funds, we hereby request that the Treasurer's Office request this individualized fund information from the funds themselves and provide this information to us." (Exhibit A at 12-13.) The parties have engaged in further correspondence on the subject but UC still has not released the information requested on an individualized fund basis.

## **II. Thomson Reuters Is Entitled to the Information It Seeks Under the Public Records Act and Under Prior Litigation Against UC and Legislation Resulting Therefrom.**

### **A. In Prior Litigation, UC Was Ordered to Produce Identical Information.**

This is not the first time people have requested access to information about UC's venture capital investments, and not the first time UC has denied the requests. In 2003, the Coalition of University Employees ("CUE") and the San Jose Mercury News

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General Counsel  
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("Mercury News") requested the same information now requested by Thomson Reuters, the "internal rate of return" ("IRR") of any private equity investments made by UC. UC denied the requests, and litigation followed. On July 24, 2003, the Alameda County Superior Court granted a Petition for Writ of Mandate sought by CUE and the Mercury News. In a 20-page ruling, Judge James A. Richman (who is now a Court of Appeal justice) held that the IRR information sought was not a trade secret; that the interest in disclosure was not clearly outweighed by the interest in non-disclosure; and that the information sought was not subject to the "official information privilege." Judge Richman's Order is attached hereto as Exhibit B.

The salient part of Judge Richman's Order read, "In sum, there is no question that numerous funds have already had their IRRs data made public, a fact that makes apt the recent observation of Justice Kay: '[p]ublic disclosure...is fatal to the existence of a trade secret.' (*In re Providian Credit Card Cases* (2002) 96 Cal. App. 4<sup>th</sup> 292, 304.) Thus there is a real issue whether the IRRs are, or at least remain, trade secrets. But even assuming they were, and are, the analysis ultimately turns on a balancing of interests, the upshot of which, the Court concludes, demonstrates that the records must be produced." (Exhibit B hereto at 8.)

The Court observed: "The public interest in favor of disclosure of government financial information is clear." (Exhibit B at 9.) The Court concluded, "For each, and all, of the reasons set forth above, the Court concludes that the public's interest in production of the IRRs clearly outweighs any public interest in keeping them secret. Put another way, failure to produce the IRRs would work an injustice. The IRRs are not exempt from disclosure under the trade secret exemption, or the 'catch-all' exemption of Section 6255(a). Nor because they are 'official information.'" (*Id.* at 14.)

UC challenged Judge Richman's ruling by taking a writ to the Court of Appeal, which summarily denied UC's Petition, and by seeking review in the California Supreme Court, which denied review.

**B. Legislation Which UC Sought Provides that the Information Sought Must Be Disclosed to the Public.**

As a result of the *Coalition of University Employees v. UC* decision, and two other lawsuits – a 2002 lawsuit brought by the San Jose Mercury News against CalPERS, and a 2004 lawsuit brought by the California First Amendment Coalition against CalPERS – UC sought legislation clarifying the obligations of public pension funds to disclose information about their "alternative investments" such as investments in venture

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General Counsel  
The Regents of the University of California  
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capital funds. In 2005, the Legislature passed legislation (Statutes 2005, chapter 258) which is now set forth in Government Code section 6254.26<sup>1</sup> which contains that clarification.

Section 6254.26(a) sets forth a list of types of information which is not subject to disclosure. But section 6254.26(b) provides that all of the types of information requested by Thomson Reuters are subject to disclosure: "Notwithstanding subdivision (a), the following information contained in records described in subdivision (a) regarding alternative investments in which public investment funds invest shall be subject to disclosure pursuant to this chapter and shall not be considered a trade secret exempt from disclosure."

The list of records expressly subject to disclosure under section 6254.26(b) mirrors the records requested by Thomson Reuters: the dollar amount of the commitment "made to each alternative investment vehicle by the public investment fund since inception" (section 6254.26(b)(2); see request for "UC commitment"); the "dollar amount of cash contributions made by the public investment fund to each alternative investment vehicle since inception" (section 6254.26(b)(3); see request for "cash in"); the dollar amount, on a fiscal year-end basis, of cash distributions received by the public investment fund from each alternative investment vehicle" (see section 6254.26(b)(4); see request for "cash out"); and the "net internal rate of return of each alternative investment vehicle since inception" (compare section 6254.26(b)(6) to request for "aggregate, time weighted return for each of the above-mentioned [Kleiner Perkins and Sequoia] funds."

To the extent Mr. Boslet's September 20, 2011 request for "aggregate, time weighted return" for each of the Kleiner Perkins and Sequoia funds differs from the "net internal rate of return" for each of those funds, my client seeks both the net internal rate of return and the aggregate time weighted return for each such KPCB and Sequoia fund.

UC apparently does not contend that any of the information sought is exempt from disclosure under the Public Records Act. Rather, UC seems to contend – after initially admitting that it "does receive information from [Kleiner Perkins and Sequoia] on an individualized fund basis" – that it "does not receive information from KPCB [and Sequoia] on an individualized fund basis," and that it does not calculate a time weighted rate of return for individual funds.

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<sup>1</sup> Hereafter all statutory references are to the Government Code unless otherwise indicated.

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General Counsel  
The Regents of the University of California  
November 29, 2011  
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UC's position does not comply with the Public Records Act for several reasons. First, section 6252.26 expressly requires that records of the dollar amount committed by public pension funds "to each alternative investment vehicle," the "cash in," the cash distributions received by the public pension funds "from each alternative investment vehicle," and the "net internal rate of return of each alternative investment vehicle since inception" must be disclosed. See Government Code section 6254.26(b)(2), (3), (4) and (6). Significantly, the legislation refers to "records" which "shall be subject to disclosure" and refers to the "keeper of the information." The plain language of the statute requires certain information to be disclosed and does not allow a public agency to hide behind the excuse that it doesn't keep the information. Indeed, UC admits that every other fund's information is available on a vintage year basis; only Sequoia's and KP's year-by-year information is not provided. (Exhibit A at 10.)

In short, nothing in section 6254.26(b) allows UC to make a special case of two funds and to disclose year-by-year internal rate of return and cash-in, cash-out information for all venture capital funds except Sequoia Capital and Kleiner Perkins. The plain language of section 6254.26(b) – a statute heavily lobbied for by UC – provides that information about internal rate of return and the amount of money invested and received by public pension funds must be disclosed.

This conclusion also follows from the Alameda County Superior Court's decision in the *Coalition of University Employees v. UC Regents* case. In that case, UC claimed that the internal rate of return calculations were trade secrets of Cambridge Associates, which then (and apparently now) was an independent consultant retained by UC to "collect and analyze data provided by the general partners of private equity partnerships." (*CUE v. UC*, Exhibit B hereto at 6.) The Court rejected the "trade secret" argument made by UC, observing, "The public interest in favor of disclosure of government financial information is clear." (*Id.* at 9.) The Court's decision presupposes – and section 6254.26(b) makes explicit – that if UC hires an outside entity to calculate internal rate of return, the records are subject to disclosure, and UC cannot avoid disclosure by claiming it doesn't have the information.

Second, the Public Records Act in general and section 6254.26(b) in particular require UC to provide the IRR information requested on an individual fund basis, not an "aggregate" basis. Section 6254.26(b) requires disclosure of information about "alternative investment vehicles," and each particular fund is a different "alternative investment vehicle." The public has a strong interest in disclosure not just of the "aggregate" performance of venture capital funds like Kleiner Perkins and Sequoia, but

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General Counsel  
The Regents of the University of California  
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each “alternative investment vehicle.” For example, Sequoia’s “aggregate” performance may be inflated by the investment of one of its funds in Google, but later funds may have performed poorly and have different managers. The public has a strong interest in knowing not just the aggregate performance, but the individual performance of each particular fund. And notably, every other individual fund’s performance is disclosed on UC’s website; only Kleiner Perkins and Sequoia are given special treatment. There is no principled or legal basis for treating Kleiner Perkins and Sequoia differently; both the public whose tax dollars pay for UC’s investments, and other funds whose information is subject to disclosure are disserved by the special and disparate treatment UC has granted Kleiner Perkins and Sequoia.<sup>2</sup>

Third, the Legislature has obligated public agencies to assist members of the public in obtaining records, not to bury their head in the sand and pretend the records don’t exist as UC has done here. Government Code section 6253.1 provides that when a member of the public requests records, the public agency, “in order to assist the member of the public [to] make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following . . . (1) Assist the member of the public to identify records and information that are responsive to the request or the purpose of the request if stated. (2) Describe the information technology and physical location in which the records exist. (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.” Thus, if a public agency can obtain responsive records – and UC obviously can here, since it has fund-by-fund, year-by-year records for all funds (with the exception of KPCB and Sequoia) on its website – it should and must obtain and disclose the records.<sup>3</sup>

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<sup>2</sup> UC’s September 26 e-mail says that UC “stopped receiving this level of detail [for Sequoia and KP] in 2003.” (Exhibit A at 10.) Interestingly, the Alameda County Superior Court’s decision in *Coalition of University Employees v. UC* was filed on July 24, 2003, which suggests that Sequoia Capital and KP intentionally defied the Court’s order by deciding not to give UC the information in an attempt to hide information which the court had said was subject to disclosure.

<sup>3</sup> Certainly if a member of the public asked for records of the state’s budget, a public agency could not deny the request on the ground that it didn’t have the records, or that it had outsourced the job of putting together the state budget to someone else. The same principle applies here.

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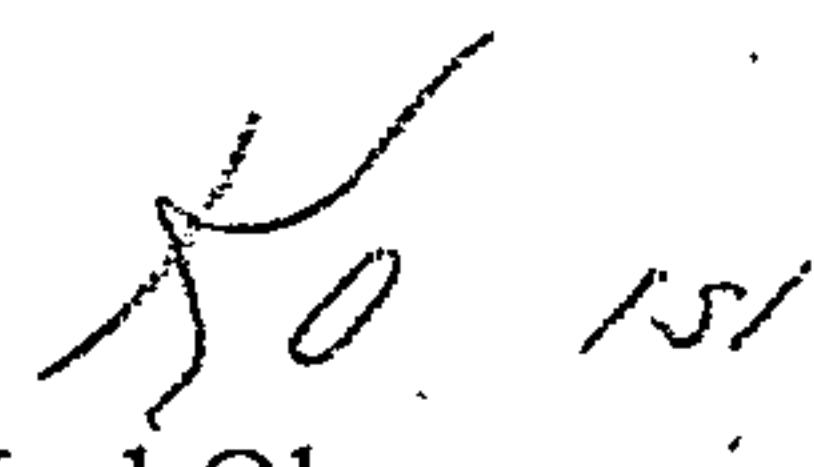
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General Counsel  
The Regents of the University of California  
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### III. Conclusion

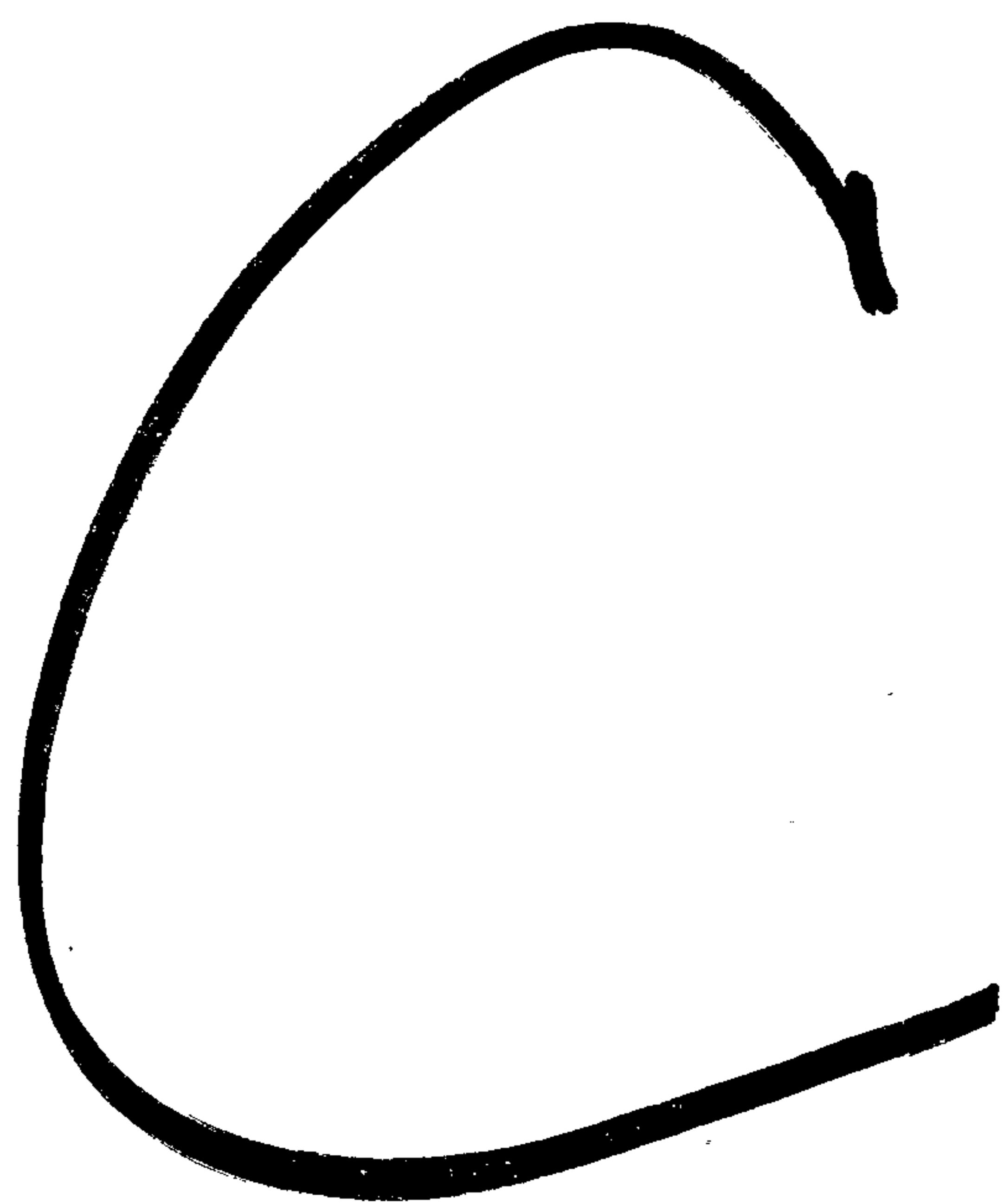
There is, as the California Supreme Court has stated, a "strong public interest in knowing how the government spends its money." *International Federation of Professional and Technical Employees Local 21 v. Superior Court of Alameda County* (2007) 42 Cal. 4<sup>th</sup> 319, 333. The Legislature recognized that strong public interest in section 6254.26, stating its intent to "allow the public to monitor the performance of public investments; for public bodies to avoid payment of excessive fees to private individuals or companies; and for the public to be able to know the principals involved in management of alternative investment funds in which public investment funds have invested so that conflicts of interest on the part of public officials can be avoided." (Stats. 2005, chapter 258, section 1(e).) The records sought here are essential to monitor the spending of public money and the performance of public investments. They should be disclosed.<sup>4</sup> For the foregoing reasons, we request that UC disclose the information requested, including the information broken down by each fund and vintage year for Kleiner Perkins and Sequoia, within 10 days of the date of this letter.

Sincerely,

  
Karl Olson  
Attorneys for Thomson Reuters Corporation

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<sup>4</sup> We do not know whether UC promised confidentiality to Kleiner Perkins or Sequoia. If it did, it made a promise it cannot keep, because under Government Code section 6253.3 and the Court's decision in *Coalition of University Employees* (Exhibit B at 7), "the mere contract for confidentiality cannot shield the IRRs from production." See *San Gabriel Tribune v. Superior Court*(1983) 143 Cal. App. 3d 762, 775 ["Assurances of confidentiality...that the data would remain private was not sufficient to convert what was a public record into a private record"].



SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

**ENDORSED  
FILED  
ALAMEDA COUNTY**

JUL 24 2003

CLERK OF THE SUPERIOR COURT  
By E. Opelski-Erickson, Deputy

COALITION OF UNIVERSITY  
EMPLOYEES, et al.

No. RG03 089302

Petitioners,

ORDER GRANTING  
PETITION FOR WRIT OF  
MANDATE

v.

THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA,

Respondent.

The Petition of Coalition of University Employees, Charles Schwartz, and San Jose Mercury News (when referred to collectively, "Petitioners") for Writ of Mandate to Compel Release of Public Records came on regularly for hearing on June 24, 2003 in Department 31 of the above-entitled Court, the Honorable James A. Richman presiding. Petitioners Coalition of University Employees and Charles Schwartz appeared by Karl Olson, petitioner San Jose Mercury News appeared by Judy Alexander, and Respondent The Regents of the University of California ("Respondent") appeared by Jerome B. Falk.

The Court has considered all of the papers filed in connection with the motion, including the *amicus curiae* briefs submitted by National Venture Capital Association and the AARP, and the arguments of counsel, and, good cause appearing, HEREBY ORDERS that the petition is GRANTED to the extent set forth below.

#### I. SCOPE OF THE PETITION

Preliminarily, the Court notes that there is some ambiguity as to the scope of the records sought by Petitioners. On one hand, the petition filed April 1, 2003 requests that the Court order Respondent to produce "all reports, documents and other public records showing the performance of private equity investments made by UC, *including but not limited to* documents showing the internal rate of return ('IRR')...." (Emphasis added; Petition 7:5-9.) On the other hand, Petitioners' original Public Records Act request sought specifically "all documents showing the internal rate of return of any private equity investments which have been made by the University of California." (Petition, Exh. A, Item 10.) And Petitioners' Memorandum of Points and Authorities in Support of Petition is similarly narrow in scope, focusing only on the IRRs and the minutes and/or tapes of portions of certain meetings.<sup>1</sup>

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<sup>1</sup> The meetings involved are "the January and March 2000 meetings of the UC Regents' Committee on Investments and the Board of Regents where they deliberated on the so-called Wilshire Associates Investment Strategy Study ...," and "the October 29, 2002 and November 13, 2002 meetings of the Committee on Investments and Board of Regents, respectively, concerning the 'Implementation of Multiple Active Investment Management Programs,' ...." (Petition for Writ of Mandate, Exh. A.).

Given that the focus of both the legal briefing and Petitioners' argument at hearing was on the narrower subset of records, the Order is limited to the IRRs and the minutes and tapes.

## II. ANALYSIS

### A. The General Rules

The Public Records Act ("PRA") is set forth at Government Code §§6250 et seq.<sup>2</sup> The PRA was enacted against a "background of legislative impatience with secrecy in government..." (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 771-772, hereinafter "*San Gabriel*"), "passed for the explicit purpose of 'increasing freedom of information' by giving the public 'access to information in possession of public agencies' [Cit.]. Maximum disclosure of the conduct of governmental operations was to be promoted by the Act. (53 Ops.Cal.Atty.Gen. 136, 143 (1970).)" (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651-652.)

The PRA defines "public records" as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (§6252(e).) *San Gabriel* quotes with approval an even broader definition of the Attorney General, that "public record" is "intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any

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<sup>2</sup> Unless otherwise noted, all statutory references are to the Government Code.

new form of record-keeping instrument as it is developed. Only purely personal information unrelated to 'the conduct of the public's business' could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities.'" (*San Gabriel*, 143 Cal.App.3d at 774.)

Generally speaking, all public records are subject to disclosure, and the burden is on the agency resisting disclosure to demonstrate why the records should not be made public. (*New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1584; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 345.) Section 6253(b) puts it this way: "[e]xcept with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person ..." And such exemptions from disclosure "are construed narrowly to ensure maximum disclosure of the conduct of governmental operations." (*New York Times v. Superior Court*, *supra*, 218 Cal.App.3d at 1585; *San Gabriel*, 143 Cal.App.3d at 772-73.)

Respondent does not dispute that the records requested meet the definition of "public records." Rather, Respondent argues that the IRRs and the minutes and tapes are exempt from disclosure under various provisions of law. The Court is not persuaded.

B. The IRRs Are Not Exempt From Production

1. The Setting

Attempting to resist production of the IRRs, Respondent's opposing brief makes three arguments: first, the public interest in avoiding the damage that will be done to the University's pension funds by disclosure clearly outweighs the public interest in disclosure; second, the IRRs are trade secrets; and third, the IRRs fall within the exception for "official information" because they were provided to the University pursuant to an agreement of confidentiality. (Memorandum of Points and Authorities in Opposition, hereinafter cited "Opp.," 8:23-18:3.) Respondent's primary argument was premised in the so-called "catch-all" exemption at Section 6255(a),<sup>3</sup> an argument to which Respondent devoted some six pages of its opposition brief. A little over two pages were devoted to the trade secret argument, and a total of 34 lines to the official information claim, most of which was an attempt to distinguish *San Gabriel*. At the hearing, by contrast, counsel for Respondent focused primarily on the contention that the IRRs are exempt as trade secrets. The Court thus begins its analysis with discussion of this contention -- and finds it wanting.

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<sup>3</sup> Section 6255(a) sets forth a general balancing test used to determine whether otherwise public records should be produced, and says that "[t]he agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

2. The IRRs Are Not Exempt as Trade Secrets, or Under the “Catch-All” Exemption

Respondent's assertion of trade secret exemption is based on Section 6254(k), read in conjunction with Evidence Code §§1060 and 1061 and Civil Code §3426.1(d).<sup>4</sup> In general, when determining whether to compel production of a claimed trade secret, the Court undertakes a two-step process. First, the Court must determine whether the material qualifies as a trade secret under Civil Code §3426.1; if it does, then the Court must determine whether or not the privilege should apply to prevent production. (See, e.g., *Bridgestone/Firestone, Inc. v. Superior Court* (1992) 7 Cal.App.4th 1384, 1393.)

Respondent does not claim that the IRRs are its own trade secrets, but rather those of Cambridge Associates LLP (“Cambridge”),<sup>5</sup> an independent consultant retained by Respondent to collect and analyze data provided by the general partners of private equity partnerships. Among the services Cambridge provides is the calculation of IRRs, for which it uses what it claims is its own expertise, research, and proprietary methodology. (Russ Decl., ¶26; Berney Decl., ¶¶4-10.)

Cambridge sells this analysis to the University, as well as to other partners in the

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<sup>4</sup> Section 6254(k) exempts from disclosure under the PRA “[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.” Evidence Code §1060 creates a qualified privilege for trade secrets, which are defined by Civil Code §3426.1 as “information … that (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

<sup>5</sup> Respondent's counsel admitted at the hearing that Respondent itself would have no trade secret protection of the IRRs had they been prepared by Respondent, rather than by Cambridge.

same funds, pursuant to confidentiality agreements. It is based on such confidentiality agreements that Respondent asserts the trade secret claim. (Opp. 15:6-15.)

Certainly the mere contract for confidentiality cannot shield the IRRs from production, as *San Gabriel* specifically held: "Assurances of confidentiality by the City to the Disposal Company that the data would remain private was not sufficient to convert what was a public record into a private record. (143 Cal.App.3d at 775; *accord: Register Division of Freedom Newspaper v. Orange County* (1984) 158 Cal.App.3d 893, 909-10.) This is particularly true here, as the evidence indicates that the confidentiality agreements have an "except by law" provision. The question then is, are the IRRs trade secrets?

As Respondent distills the law, the Evidence Code Section 1061 definition of a trade secret "has been characterized as consisting of 'three elements: (a) information (b) which is valuable because unknown to others and (c) which the owner has attempted to keep secret.' (*ABBA Rubber Co. v. Sequist* (1991) 235 Cal.App.3d 1, 18.)" (Opp. 14:20-22.)

Both sides have put forth declarations from lawyers and legal assistants who have reviewed and distilled a myriad of data thought to be helpful, among the last of which was a Declaration of Daphne A. Drescher in Opposition to the Petition. Ms. Drescher, a litigation legal assistant, provided testimony to the effect that as of September 30, 2002 the University had invested in 94 different private

equity funds, 6 of which have never generated an IRR, and 55 of which have not had their IRR disclosed by any public funds.<sup>6</sup> Even so, this means that over 37% of the funds which have generated IRRs -- 33 out of 88 -- have had their IRRs revealed. Ms. Drescher's review also reveals that for 24 of the 33 funds whose IRRs have been disclosed, the IRR figures are "materially different" from those calculated by Cambridge. If all this is evidence of a valuable "trade secret," it comes in a novel guise.

In sum, there is no question that numerous funds have already had their IRRs data made public, a fact that makes apt the recent observation of Justice Kay: "[p]ublic disclosure...is fatal to the existence of a trade secret." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4<sup>th</sup> 292, 304.) Thus there is a real issue whether the IRRs are, or at least remain, trade secrets. But even assuming they were, and are, the analysis ultimately turns on a balancing of interests, the upshot of which, the Court concludes, demonstrates that the records must be produced.

When an agency seeks to withhold production of public records on the grounds that those records are trade secrets, the Court ultimately is required to balance the public's interest in disclosure against the public interest in non-disclosure. (See *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 206, 210-211.) The reason is that Evidence Code §1060 creates a privilege for trade secrets only to the extent that "allowance of the privilege will not tend to conceal fraud or otherwise

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<sup>6</sup> Ms. Drescher does not say not disclosed at all.

work injustice." The *Uribe* court construed the "work injustice" language as essentially embodying a balancing test analogous to that set forth in the "catch-all" exemption of Section 6255(a).<sup>7</sup> In essence, therefore, the second part of the two-part trade secret test dovetails with PRA law, especially the balancing required by the "catch-all" exemption of Section 6255(a).<sup>8</sup> The Court concludes that the public interest in disclosure of the IRRs clearly outweighs the claimed need to keep them secret.

The public interest in favor of disclosure of government financial information is clear. (*Connell v. Superior Court* (1997) 56 Cal.App.4<sup>th</sup> 601, 617: [information regarding warrants issued by Controller to State vendors]; *San Gabriel*, 143 Cal.App.3d at 775 [financial data on which City relied in granting rate increase].) As *Connell* put it in rejecting the Controller's efforts to shield the records from production, "While the Controller may assert the public has no interest in these records because she is performing her task properly and is herself seeking out unpaid vendors to ensure they receive compensation for goods and services, this is akin to asking that we allow her 'to exercise absolute discretion,

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<sup>7</sup> Respondent argues that *Uribe* does not apply, as it is based on an outdated definition of trade secrets. However, *Uribe* is apposite not because of any particular definition of trade secrets, but rather because it holds that an agency's claim of trade secret exemption is to be evaluated by a balancing of the public interests.

<sup>8</sup> There is arguably one difference between applying the "catch-all" exemption and the trade secret exemption, as noted by Respondent's counsel at hearing: the placement of the burden. Section 6255(a) places the burden on the agency resisting disclosure to justify the withholding of records by demonstrating that the public interest served by non disclosure clearly outweighs the public interest served by disclosure. (See *San Gabriel*, 143 Cal.App.3d at 780.) In contrast, under a trade secret analysis, once the party claiming the privilege has met its initial burden of demonstrating the existence of a trade secret, the burden shifts to the party seeking disclosure to

shielded from public accountability' in the operations of her office.... However, the public interest demands the ability to verify. Only in this way can the public be certain, for example, that there is not a conspiracy of silence .... Since there is a strong public interest in disclosure, the balance must tip in favor of access...." (56 Cal.App.4<sup>th</sup> at 617.) The claimed public interest in non-disclosure urged by Respondent is not to the contrary. At best, it is conclusory -- at worst, speculative.

Respondent's fundamental argument in claimed support of non-disclosure is the prediction that Respondent will not be able to secure desirable investments for its members. In Respondent's words, "disclosure here would have potentially dire financial consequences, as it would likely result in the University being shut out of participation in top private equity funds, at a long-term cost of perhaps billions of dollars in returns. The problem is described in declarations submitted by several individuals with extensive experience in the venture capital arena. (See Russ Decl., ¶28-35; Lehmann Decl., ¶8; Berney Decl., ¶16.)" (Opposition 11:18-22.) Respondent also says that if it is forced to turn over IRR information, many venture funds may be less likely to provide such information in the future; this, says Respondent, will limit its ability to make informed investment decisions, to the detriment of the public. (See Supp. Decl. of Scott A. Berney in Opposition to Petition ¶5.) In short, Respondent argues that revealing the IRRs will make the desirable funds -- the so called "top tier partnerships" -- less likely to permit

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demonstrate that the trade secret should be disclosed, i.e., that not to disclose it would otherwise "work injustice." (See, e.g., *Bridgestone/Firestone, Inc.*, *supra*, 7 Cal.App.4th at 1393.).

Respondent to continue investing in them, to the detriment of the public. (Opposition 11:25-12:2.) Respondent's showing is not compelling.

To begin with, while Respondent has submitted a number of declarations from persons affiliated with various funds and others in claimed support of its argument against disclosure of the IRRs, much of what is set forth in those declarations is conclusory. For example, the testimony of Bruce Lehmann, Professor of Economics and Finance:

I am afraid there will be a nontrivial cost to the University if it is forced to disclose the internal rates of return and other valuation data regarding its private equity partnerships. My concern is that the general partners will not invite the University to invest in any new partnerships and/or may seek to force the University to divest its existing position.

(Lehmann Dec. in Opposition to Petition ¶8; see also, Dec. of Dennis J. Purcell in Opposition to Petition at ¶7 ["...forcing UC to disclose the information that the Petitioners seek would result in investors receiving less information about their investments."; Supp. Dec. of Scott A. Berney in Opposition to Petition at ¶5 ["Forced disclosure of IRR[s] ... calls into question the efficacy of [UC's nondisclosure agreement with fund managers], making funds more reluctant to release data to CA and/or other public fund investors. ... Should such practices become more widespread, as the result of increased pressure for public disclosure, the quality and quantity of information available to investors will decrease."])

More importantly, the Court notes that of the approximately 94 funds in which Respondent invests, less than one quarter have submitted declarations in

support of Respondent's opposition. (See Dec. of Judy Alexander ¶¶2-5; Dec. of Daphne Drescher ¶3.) And of those funds which do provide declarations, many object only to release of "Portfolio Company Information," not of IRRs. Moreover, some fund managers who do object to release of the IRR admit that the same information has recently been disclosed by CalPERS and others, and that they did nothing. (See e.g., Declaration of Gwill York, ¶ 12 [admitting disclosure of IRR and other information of Lighthouse Management Partners V by "certain of our limited partners"; silent as to any action taken in response]; Declaration of John Gannon, ¶ 12 [revealing that Polaris Venture Partners III and IV had their IRRs and other information disclosed by "certain of our limited partners"; silent about what, if anything, Polaris did in response].)

Most importantly, the record as a whole demonstrates that other public pension plans have produced IRR information without the dire consequences predicted by Respondent -- indeed, that perhaps the dire predictions are false. CalPERS, apparently the nation's largest public pension fund, discloses IRRs, as do the California State Teachers Retirement System, the University of Texas Investment Management Company, the University of Michigan, the University of Illinois, the Washington State public pension fund, and the City and County of San Francisco Retirement System. All have released IRRs, all apparently without any of the consequences Respondent predicts. Particularly persuasive is the evidence about Sequoia, admittedly a top venture fund, which recently accepted an \$8

million investment from the University of Michigan, *after that University publicly released IRR information.* (See Dec. of Matt Marshall in Support of Petition ¶¶3, 4, 7, and exh. A.) None of Respondent's "the sky will fall" concern has manifested. Which is perhaps not surprising, at least in the current economic climate.

While it is hardly evidence, the observation of one industry source is illuminating: "The ongoing private equity bloodbath has produced a buyers market, in which L.P.s, at last, have the upper hand. Whereas as recently as 2000, institutional investors had to clamor and beg to be given admittance to a hot fund, now top-shelf private equity firms find themselves groveling for commitments. The new power paradigm has emboldened many L.P.s to ask for better terms. More generally, the stumbling of once-mighty G.P.s has led some investors to more openly question standard industry practices, or rather, the lack thereof." ("Private Equity - Painful Lessons Learned in 2001," February 2002 Private Equity Central, at p. 6.)

*California State University Fresno v. Superior Court* (2001) 90 Cal.App.4<sup>th</sup> 810 is persuasive. The issue there arose out of the University's resistance to the disclosure of the names of those who had purchased luxury suites in the arena. The University asserted exemptions under Sections 6254(k) and 6255, based on the claim that "large donations will be cancelled if promises of confidentiality are breached." (Id. at 834.) The Court of Appeal rejected the claim, on two bases:

first, that the donors "voluntarily diminished their own privacy interests" by becoming involved in the public's business (*Ibid.*); second, that "any claims by the University that donations will be cancelled are speculative, supported only by inadmissible hearsay. Statements by University personnel that disclosure of the licenses will 'likely' have a chilling effect on future donations, resulting in a 'potential' loss of donations, are inadequate to demonstrate any significant public interest in non-disclosure." (*Id.* at 835.) So, the Court concluded, "[t]he unsupported statements constitute nothing more than speculative, self-serving opinions designed to preclude the dissemination of information to which the public is entitled." (*Ibid.*) Likewise here.

For each, and all, of the reasons set forth above, the Court concludes that the public's interest in production of the IRRs clearly outweighs any public interest in keeping them secret. Put another way, failure to produce the IRRs would work an injustice. The IRRS are not exempt from disclosure under the trade secret exemption, or the "catch-all" exemption of Section 6255(a). Nor because they are "official information."

### 3. The IRRs Are Not Exempt As Official Information

Respondent also argues, however half-heartedly, that the IRRs are exempt from disclosure under the "official information" exemption set forth in Evidence Code §1040, in conjunction with Section 6254(k). Evidence Code §1040(a) defines "official information" as "information acquired in confidence by a public

employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made." It is probably enough to note that no case applying the official information privilege has involved records obtained from outside vendors, and claimed to be confidential because of contractual obligation. In any event, as Respondent concedes, "[t]he privilege imposes a public interest balancing test, requiring disclosure where the public interest in disclosure outweighs the public interest in confidentiality." (Opposition 17:1-3; see also Evidence Code §1040(b).) Thus, and for the reasons set forth above, the Court concludes that the "official information" privilege does not shield the IRRs from disclosure.

In sum, to the extent the Petition seeks production of the IRRs, the Petition is GRANTED.

C. The Minutes and/or Tapes of the Meetings

The second category of records at issue are the minutes and/or tapes of certain meetings held in January and March 2000 and October and November 2002. (See fn. 1 ante.) These, Respondent argues, are records of properly closed meetings, and thus not public records subject to disclosure under Government Code §11126.1.

Respondent is correct, to the extent that Government Code §11126.1 provides that "[t]he minute book [of a closed session meeting of a state body] ... is not a public record subject to inspection pursuant to the California Public Records

Act." However, the question remains as to whether the meetings at issue were properly closed. Respondent argues that they were, relying on two parts of Education Code §92032(b), which provides that "[t]he Regents of the University of California may conduct closed sessions when they meet to consider or discuss: ... (4) [m]atters involving the purchase or sale of investments for endowment and pension funds ... [or] (7) [m]atters concerning the appointment, employment, performance, compensation, or dismissal of university officers or employees, excluding individual regents other than the president of the university."

As to subsection (4), Respondent argues that the meetings were properly closed in that they involved discussions about matters involving the purchase or sale of investments, e.g., whether the University of California should switch from internal to external management of public equity investments and whether the University should adopt certain asset allocation formulas. Petitioners urge the Court to adopt a narrower reading of subsection (4), that meetings are properly closed only when they include discussions regarding the purchase or sale of particular specific investments, rather than investment strategy in general. The Court agrees with Petitioners.

It cannot be gainsaid that the general rule is that meetings of the UC Regents are to be open to the public. (See Cal. Const., Art. IX, §9(g).) Thus, and in light of the policy set forth in the preamble to the Bagley-Keene Open Meeting Act (Section 11120), the cases recognize that any exemptions to the open meeting

laws must be construed narrowly, to favor openness and disclosure. (See, e.g. *Duval v. Board of Trustees* (2001) 93 Cal.App.4<sup>th</sup> 902, 908 [personnel exception to Brown Act construed narrowly]; *Bollinger v. San Diego Civil Service Comm.* (2001) 71 Cal.App.4<sup>th</sup> 568, 573 [personnel exception to open meeting law construed narrowly, and sunshine law construed liberally in favor of openness].)

The legislative history behind Education Code § 92032(b)(4) demonstrates that that exemption was designed, at least in part, to prevent the speculative price movements that could result if word of future specific investment plans became known to the public. In other words, if the public became aware that the University was planning to buy or sell 100,000 shares of a particular stock, that news alone could be meaningful. However, the Court finds nothing in the authorities cited by Respondent, or in any other authority, to suggest that the exception in subsection (4) should be construed so broadly as to permit the closing of any meeting in which any discussion whatsoever about investments takes place. The Court rejects Respondent's argument, at least to the extent that the meetings should have been closed in their entirety.

And while there might -- and the Court emphasizes might -- have been some aspects of those meetings that could invoke Education Code § 92032(b)(4), such would not justify withholding records related to past meetings where action has already been taken. Here the Regents are withholding minutes and tapes of meetings in the year 2000 (when the published agenda identified the topic as

“Wilshire Associates Asset Allocation Study”) and the fall of 2002 (when the University adopted a “Multiple Manager Equity Investment Strategy.”) There is simply no basis for keeping deliberations about an issue which occurred in the year 2000 secret from the public, especially as the central document under discussion has long since been released publicly. A similar conclusion follows with respect to the October and November 2002 meetings, where the agenda topic was “Implementation of Multiple Active Investment Management Programs,” as the investment transactions discussed have been completed and the University has released “Item 603X,” the 31-page background document for that meeting. Education Code § 92032(b)(4) does not avail Respondent.

Likewise the Court would reject Respondent’s argument that the October and November 2002 meetings were properly closed in their entirety under subsection (7) of Education Code §92032(b), unless Respondent could demonstrate that the meetings contained discussions regarding the performance and/or dismissal of university employees, i.e., the University’s internal equity staff. The Court concludes Education Code §92032(b)(7) did not justify closing the meetings at issue, at least not in their entirety, and that the minutes and/or tapes of those meetings should also be produced unless Respondent can demonstrate otherwise.

In this regard, Respondent is ordered to perform an initial review of the minutes and tapes, to determine if there are any references to individual employees

or any other matters that Respondent believes would violate the privacy rights of its employees. If there are, Respondent shall redact such material and within 30 days of this Order lodge the redacted records with the Court for *in camera* review, following which the Court will issue a further Order. Meanwhile, all other records will be produced.

In conclusion on this issue, the petition is GRANTED to the extent it seeks production of the minutes and/or tapes of the January and March 2000 and October and November 2002 meetings, subject to the qualification set forth above.

D. Future Relief

To the extent the Petition seeks injunctive relief governing records to be produced in the future and/or the opening of future meetings (see Petition for Writ of Mandate, Prayer at ¶¶1, 5) the Petition is DENIED.

III. OBJECTIONS TO EVIDENCE

A) Petitioners' objections to evidence numbered I through XXVII, with subparts, are all overruled, except as follows:

Declaration of David Russ

Paragraph 27, pp. 20:24-25 and 22:1-5 -- sustained: lack of foundation.

B) Respondent's objections to evidence, identified as general and specific objections to six declarations, are all overruled except as follows:

Declaration of Claudia Horing

Objection 3 -- sustained: irrelevant; improper opinion.

Declaration of Matt Marshall

Objections 5, 6, 15, 21, 25, and 26 -- sustained: argumentative.

Objection 17 -- sustained: irrelevant.

Objection 22 -- sustained: lack of foundation.

Reply Declaration of Karl Olson

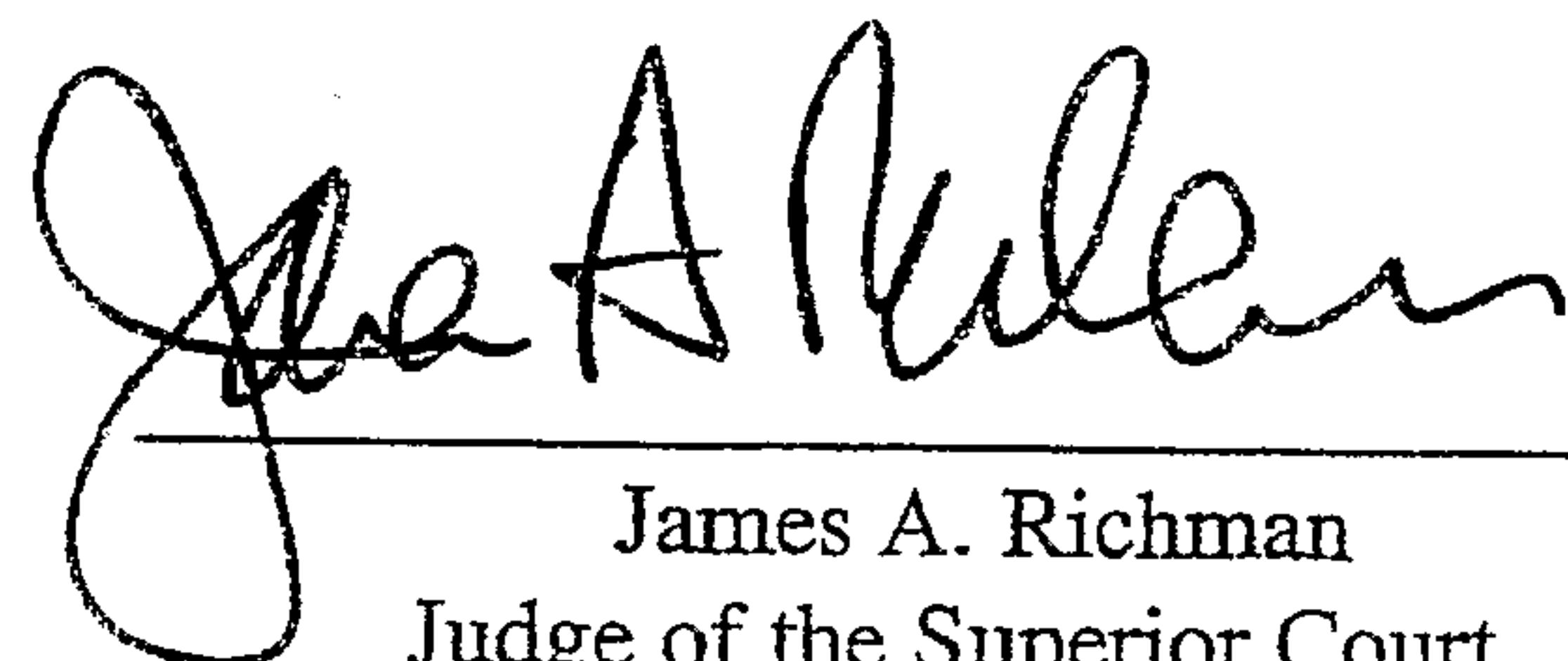
Objections 1, 2, 3, 4, and 6 -- sustained: irrelevant.

IV. CONCLUSION

For each, and all, of the reasons set forth above, the Court concludes that the balancing of interests compels production of the IRRs and the minutes and tapes of the meetings in issue, and the Petition for Writ of Mandate is GRANTED to the extent set forth above.

Petitioners' counsel to prepare a Judgment in accordance with this Order.

Dated: JUL 24 2003



James A. Richman  
Judge of the Superior Court

### CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that I caused a true copy of the foregoing ORDER GRANTING PETITION FOR WRIT OF MANDATE to be mailed, first-class, postage pre-paid, in a sealed envelope, addressed as shown below. Executed, deposited and mailed in Oakland, California on July 24, 2003.

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Alameda County Superior Court, Department 31

1 equity investments made by UC. UC denied the requests, and litigation followed. On July 24,  
2 2003, this Court granted a Petition for Writ of Mandate sought by CUE and the *Mercury News*.  
3 In a 20-page ruling, Judge James A. Richman (who is now a Court of Appeal justice) held that  
4 the IRR information sought was not a trade secret; that the interest in disclosure was not clearly  
5 outweighed by the interest in non-disclosure; and that the information sought was not subject to  
6 the "official information privilege." Judge Richman's Order is attached hereto as Exhibit C.

7 The salient part of Judge Richman's Order read, "In sum, there is no question that  
8 numerous funds have already had their IRRs data made public, a fact that makes apt the recent  
9 observation of Justice Kay: '[p]ublic disclosure...is fatal to the existence of a trade secret.' (*In re*  
10 *Providian Credit Card Cases* (2002) 96 Cal. App. 4<sup>th</sup> 292, 304.) Thus there is a real issue  
11 whether the IRRs are, or at least remain, trade secrets. But even assuming they were, and are, the  
12 analysis ultimately turns on a balancing of interests, the upshot of which, the Court concludes,  
13 demonstrates that the records musty be produced." (Exhibit C hereto at 8.)

14 The Court observed: "The public interest in favor of disclosure of government financial  
15 information is clear." (Exhibit C at 9.) The Court concluded, "For each, and all, of the reasons set  
16 forth above, the Court concludes that the public's interest in production of the IRRs clearly  
17 outweighs any public interest in keeping them secret. Put another way, failure to produce the  
18 IRRs would work an injustice. The IRRs are not exempt from disclosure under the trade secret  
19 exemption, or the 'catch-all' exemption of Section 6255(a). Nor because they are 'official  
20 information.'" (*Id.* at 14.)

21 UC challenged Judge Richman's ruling by taking a writ to the Court of Appeal, which  
22 summarily denied UC's Petition, and by seeking review in the California Supreme Court, which  
23 denied review.

24 **B. Legislation Which UC Sought Provides that the Information Sought Must Be  
25 Disclosed to the Public.**

26 As a result of the *Coalition of University Employees v. UC* decision, and two other  
27 lawsuits – a 2002 lawsuit brought by the *San Jose Mercury News* against CalPERS, and a 2004  
28 lawsuit brought by the California First Amendment Coalition against CalPERS – UC sought